Giles v. Frey Doc. 56

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE "A MILLION LITTLE PIECES" LITIGATION

No. 06-md-1771

Hon. Richard J. Holwell

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU PURCHASED THE BOOK A MILLION LITTLE PIECES BEFORE JANUARY 26, 2006 IN ANY FORMAT, PLEASE READ THIS NOTICE CAREFULLY BECAUSE IT MAY AFFECT CERTAIN OF YOUR RIGHTS IN A PENDING LAWSUIT.

This notice provides you with important information in connection with the settlement of a lawsuit concerning the book *A Million Little Pieces*. If you wish to recover money you must act by October 1, 2007. You should read this Notice carefully.

A federal Court has authorized this notice. This is not a solicitation from a lawyer. This Notice has been issued pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of New York (the "Court"). The purpose of this Notice is to inform you of the pendency and proposed Settlement of this Class Action lawsuit, and of the hearing to be held by the court to consider the fairness, reasonableness, an adequacy of the Settlement. This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in this litigation, or the merits of the claims or defenses asserted. This Notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the Settlement and this class action lawsuit.

WHY SHOULD YOU READ THIS NOTICE?

You should read this notice because you may be eligible to receive money from the settlement of a class action lawsuit relating to the publication of the book A Million Little Pieces.

Dockets.Justia.com

WHAT IS THE LAWSUIT ABOUT?

James Frey is the author of the book A Million Little Pieces. Random House published the book in 2003. The book was marketed as a "memoir/literature." In early January 2006, it was reported on the Internet, various television programs, including a widely covered January 26, 2006 telecast of a nationally syndicated program, and other media outlets that certain facts in the book had been altered and that incidents had been embellished. Both prior to and following the January 26, 2006 telecast and many of the other reports referenced above, a number of putative class action lawsuits were filed claiming that purchasers of the book had been misled by the marketing of the book and would not have purchased the book had they known that certain facts in the book had been altered and that incidents had been embellished. These class actions were later consolidated into one action in a New York federal court. The parties have now reached an agreement to settle the actions and compensate purchasers of the book who claim they were misled.

WHY IS THIS LAWSUIT A CLASS ACTION?

In a class action, one or more people called Class Representatives sue on behalf of people who have similar claims. All of these people are referred to collectively as the settlement class, or individually as Settlement Class Members. One Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

HOW DO I KNOW IF I AM A CLASS MEMBER?

The Court has preliminarily determined that the following persons are members of the Settlement Class:

> All persons who purchased the book A Million Little Pieces in any format (including, but not limited to, in hardback, paperback, cassette, CD, or any other electronic media), on or before January 26, 2006.

WHY IS THERE A SETTLEMENT?

The Court did not decide on behalf of the Plaintiffs or the Defendants. Instead, Class Representatives and the Defendants agreed to a settlement. The Class Representatives and their respective attorneys believe the Settlement is best for all Settlement Class Members.

WHAT AMOUNT OF MONEY AM I ENTITLED TO RECEIVE?

Under the proposed settlement, each Settlement Class Member is eligible to receive a refund up to the full purchase price of the book (or other media), so long as such refunds do not cause defendants to pay more than $2.35 million for all costs associated with settlement. If the amount of refund claims exceeds the amount available for distribution, then each Settlement Class Member will receive a pro rata share of the amount available for distribution.

HOW DO I CLAIM MY SHARE OF THE SETTLEMENT?

To receive a refund, a Settlement Class Member must complete a Claim Form and submit it together with the front cover of the book (or other specified proof of purchase depending on the media purchased) by October 1, 2007. You can obtain a claim form by calling 1-866-459-3651 or you can download one from the following website: **www.amlpsettlement.com**. The Claim Form explains how to make a claim. If you do not submit a claim form, you will not receive any part of the settlement.

WHAT IS THE LEGAL EFFECT OF THE SETTLEMENT?

The settlement provides for a broad release of all claims relating to the sale and marketing of the book. For the precise details of the broad release of claims, consult the settlement agreement on file with the Court or available at *www.amlpsettlement.com*.

WHO WILL DETERMINE IF THE SETTLEMENT IS FAIR?

The Court has ordered that a hearing be held on **Friday, November 2, 2007, at 10:00 a.m.**, in Room 17B of the federal courthouse in Manhattan, located at 500 Pearl Street, New York, New York, to determine whether the proposed settlement is fair, reasonable, and adequate and whether it should be approved by the Court; whether judgment should be entered dismissing the lawsuit with prejudice; and the amount of attorneys' fees and costs to be awarded to Class Counsel. The Settlement Hearing may be continued from time to time by the Court.

WHAT IF I OBJECT TO THE SETTLEMENT?

A Settlement Class Member wishing to object to the settlement must file a written objection to it. Your written objection must be received on or before August 23, 2007. Your objection must list your name, address, telephone number and, if applicable, the name, address and telephone number of your attorney. Your objection must be accompanied by copies of any supporting papers or briefs you intend to submit in support of your objection. Objections must be mailed to the Court, Class Counsel, and Defendants' Counsel at the addresses listed below. You may also attend the settlement hearing. If you intend to appear personally or through personal counsel at the hearing, you must include a notice of intent to appear in addition to your objection and mail copies to the Court, Class Counsel, and Defendants' Counsel. **ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE WAY DESCRIBED ABOVE SHALL BE DEEMED TO HAVE WAIVED SUCH OBJECTION AND SHALL NOT HAVE ANY RIGHT TO OBJECT TO THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT.**

Clerk of the Court	**Class Co-Lead Counsel**	**Frey's Counsel**	**Random House's Counsel**
Clerk of the Court 500 Pearl Street New York, New York	Larry D. Drury Larry D. Drury, Ltd. 205 W. Randolph Street, Suite 1430 Chicago, IL 60606 Evan J. Smith Brodsky & Smith, LLC 240 Mineola Blvd. Mineola, NY 11501	Derek J. Meyer McDermott, Will & Emery LLP 227 West Monroe St. Chicago, IL 60606	Mark B. Blocker Sidley Austin LLP One S. Dearborn St. Chicago, IL 60603

WHAT SHOULD I DO IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT?

To exclude yourself from the Settlement Class, you must submit a written request for exclusion that includes your name and current address. Each request must also contain a signed statement that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the In re A Million Little Pieces Litigation." Requests for exclusion must be mailed to Settlement Class Counsel at the address listed above, and must be received no later than August 23, 2007. **DO NOT REQUEST EXCLUSION IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT.**

If you validly request exclusion from the Class, you will (a) not be entitled to any of the Settlement Class benefits; (b) be excluded from the Class; (c) not be bound by any judgment entered in the lawsuit; and (d) not be precluded from prosecuting an individual claim, if timely, against the Released Parties based on the issues raised in the lawsuit.

If you do not request exclusion from the Class, you will be bound by all determinations or judgments in the lawsuit in connection with the settlement entered into or approved by the Court, whether favorable or unfavorable to the Class, including the judgment ultimately rendered in the lawsuit.

WHAT IS THE DIFFERENCE BETWEEN EXCLUSION AND OBJECTING FROM THE SETTLEMENT?

Objecting simply tells the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the lawsuit no longer affects you.

WHO REPRESENTS THE CLASS?

The Court has appointed several individuals who purchased by book as Class Representatives and several attorneys who filed lawsuits as Settlement Class Counsel. The lead lawyers from the Settlement Class Counsel are:

Larry D. Drury
Larry D. Drury, Ltd.
205 W. Randolph Street, Suite 1430
Chicago, IL 60606

and

Evan J. Smith
Brodsky & Smith, LLC
240 Mineola Blvd.
Mineola, NY 11501

Class Counsel represent your interest in the lawsuit. You will not be charged for their services. Class Counsel will present a petition to the Court to be paid for their service to the Settlement Class. You may, however, hire your own attorney at your own expense to advise you in this matter.

WHO IS RESPONSIBLE FOR CLASS COUNSEL'S ATTORNEYS' FEES?

Settlement Class Counsel has indicated that they intend to petition the Court for an award of attorneys' fees for their work on behalf of the Settlement Class. Defendants have agreed not to take any position on this request. **You will not have to pay any attorneys' fees or costs; any amount awarded by the Court will be paid by Defendants and will be included in the $2.35 million maximum amount to be paid by Defendants.**

WHEN WILL I RECEIVE MY PAYMENT?

The Court will hold a fairness hearing on **November 2, 2007, at 10:00 a.m.**, to decide whether to approve the Settlement. If the Settlement is approved, the payment of claims will be made within 60 days from the end of the claim period assuming no appeals have been filed. In the event there are appeals filed this would delay the process of payment of the claims.

DO I HAVE TO COME TO THE HEARING?

No. Settlement Class Counsel will answer any questions the Court may have.

WHERE CAN I GET ADDITIONAL INFORMATION?

This notice is intended only as a summary of the lawsuit and proposed settlement. It is not a complete statement of the lawsuit or the proposed settlement. You may inspect the pleadings and other papers (including the proposed settlement agreement) that have been filed in this lawsuit at the Office of the Clerk, 500 Pearl Street, New York, New York. The settlement agreement is also available at *www.amlpsettlement.com*. If you have any questions about this notice or the proposed settlement, you may contact Class Counsel at the address listed above.

DO NOT CONTACT THE COURT OR DEFENDANTS FOR INFORMATION.

Dated: 5/14/07

Judge Richard J. Holwell